

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Dennis E. Hecker,

Debtor.

Case No. BKY 09-50779  
Chapter 7 Case

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**NOTICE OF HEARING AND MOTION  
BY FREDRIKSON & BYRON, P.A., TO WITHDRAW  
AS DEBTOR'S COUNSEL**

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TO: The Office of the United States Trustee and Other Parties in Interest as Specified in Local Rule 9013.

1. Fredrikson & Byron, P.A., ("Fredrikson") moves the Court for the relief requested below and gives notice of a hearing.

2. The Court will hold a hearing on Fredrikson's Motion to Withdraw as Debtor's Counsel (the "Motion") at 2:30 p.m. on Wednesday, April 21, 2010, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, before the Honorable Robert J. Kressel.

3. Any response to this Motion must be served and filed not later than April 16, 2010, which is five days before the time set for the hearing (including Saturdays, Sundays, and Holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rules 1070-1 and 1073-1. The petition commencing this chapter 7 case was filed on June 4, 2009 (the "Filing Date"). The case is currently pending in this Court.

5. This motion arises under Fed. R. Bankr. P. 9010, Local Rule 9010-3(e)(2), and Minnesota Rule of Professional Conduct 1.16. This motion is filed under Local Rules 9013-1

through 3. Notice of the hearing on this motion is provided pursuant to Bankruptcy Rule 2002(a) and Local Rules 9013-1 through 3 and 2002-1(a). Fredrikson requests the relief described below.

### **FACTUAL BACKGROUND**

6. Pre-filing, Fredrikson was retained by the Debtor to represent Debtor in connection with this case.

7. Accordingly, Fredrikson worked with the Debtor to prepare the necessary paperwork to commence the case, and continued thereon from the Filing Date through approximately September 2009. Fredrikson represented Debtor in connection with the preparation and filing of the petition and schedules and amendments to certain schedules. Fredrikson also represented Debtor at the Section 341 meeting and appeared on Debtor's behalf in connection with court hearings on various motions in the case from June to September 2009.

8. In August or September 2009, Debtor retained Mr. William R. Skolnick, of Skolnick & Schiff, to also represent him in connection with this proceeding. See Docket Entry No. 158 (Notice of Appearance of William R. Skolnick), dated September 2, 2009. Mr. Skolnick also undertook to represent Debtor in various adversary proceedings in which Fredrikson has not appeared.

9. While Fredrikson was not terminated when Mr. Skolnick was retained, Fredrikson's role was greatly reduced. After Mr. Skolnick was retained, apart from some document-production related issues that Mr. Skolnick eventually took over, the only tasks for which Fredrikson assumed primary responsibility were (1) the appeal of the homestead exemption ruling, (2) representation of the Debtor for some portion of his 2004 examination (both of which have been completed), and (3) occasional consultation with Debtor or Mr. Skolnick regarding aspects of the case.

10. As noted above, Fredrikson did not represent Debtor in any of the adversary cases commenced against Debtor.

11. In early March 2010, Debtor (through Mr. Skolnick) negotiated a settlement with the Trustee whereby the Debtor would not contest the action commenced by the Trustee to deny Debtor a discharge. See Docket Entry No. 420 (Notice of Hearing and Motion to Approve Compromise and Settlement), dated March 12, 2010. As a result of that settlement, while the Debtor's duty to cooperate with the Trustee remains, there is likely very little additional legal work to be done on behalf of the Debtor.

#### **BASIS FOR MOTION TO WITHDRAW**

12. Except for a \$30,000 retainer, Fredrikson has not received payment for work beyond what was initially agreed upon for the scope of Debtor's representation in the case. Debtor has been unable to pay for services beyond the scope of the representation in the case, such as representation in connection with the appeal of the homestead exemption ruling and consultations on other motions. Given the settlement on the discharge denial, it does not appear likely that Debtor will be able to pay Fredrikson any portion of the balance owed.

13. In addition, in early March, the United States Grand Jury issued a superseding indictment of the Debtor. The superseding indictment may appear to raise questions about the Debtor's use of Fredrikson's services.

14. In light of these factors, Fredrikson believes it has no choice but to seek permission to withdraw from further representation of Debtor in this case. Fredrikson has advised the Debtor that it intended to file this Motion seeking permission to withdraw.

15. Because of the present posture of the case (namely, the Debtor is not contesting the denial of his discharge), withdrawal does not present any prejudice to the Debtor.

**RELIEF REQUESTED**

WHEREFORE, Fredrikson respectfully requests that this Court enter an order: (a) granting its motion to withdraw as counsel for the Debtor.

Pursuant to Local Rule 9013-2(a), Debtor's Motion is verified and is accompanied by a Memorandum of Law, Proposed Order, and Certificate of Service.

FREDRIKSON & BYRON, P.A.

Dated: April 5, 2010

/s/ Clinton E. Cutler

Clinton E. Cutler (#158094)  
Cynthia A. Moyer (#211229)  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Phone (612) 492-7000  
Fax (612) 492-7077

## VERIFICATION

I, Clinton E. Cutler, am a Vice President of Fredrikson & Byron, P.A. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: April 5, 2010

Signed: /s/ Clinton E. Cutler  
Clinton E. Cutler

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

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Debtor.

Case No. BKY 09-50779  
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**MEMORANDUM IN SUPPORT OF MOTION  
BY FREDRIKSON & BYRON, P.A., TO WITHDRAW  
AS DEBTOR'S COUNSEL**

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Fredrikson & Byron, P.A. ("Fredrikson") submits this memorandum in support of its Motion to withdraw as Debtor's counsel. The facts are as set forth in the Motion.

**Legal Argument**

Fredrikson & Byron, P.A. should be allowed to withdraw from the case because Debtor has failed to honor his payment obligations for legal fees and expenses, and for the other reasons set forth in the Notice of Hearing and Motion. Local Bankruptcy Rule 9010-3(e)(2) requires only that the movant file a motion for leave to withdraw. Under the Minnesota Rules of Professional Conduct 1.16, a lawyer may withdraw from representation if:

...

(3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(4) the representation has been rendered unreasonably difficult by the client;

(5) or other good cause for withdrawal exists.

...

Here, Fredrikson has good cause for seeking to withdraw as counsel to the Debtor as set forth in the Notice of Hearing and Motion. The Debtor is aware of this Motion. The Debtor will

not be prejudiced by Fredrikson's withdrawal. He has decided not to contest the denial of his discharge, thereby effectively ending the legal work required in connection with this case.

**Conclusion**

For all of these reasons, Fredrikson & Byron, P.A.'s Motion to withdraw as counsel should be granted.

FREDRIKSON & BYRON, P.A.

Dated: April 5, 2010

*/s/ Clinton E. Cutler*

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Clinton E. Cutler (#158094)  
Cynthia A. Moyer (#211229)  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Phone (612) 492-7000  
Fax (612) 492-7077

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**CERTIFICATE OF SERVICE**

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Cynthia A. Moyer, under penalty of perjury, states that on April 5, 2010, she caused to be served the following:

1. Notice of Hearing and Motion by Fredrikson & Byron, P.A. to Withdraw as Debtor's Counsel;
2. Memorandum in Support of Motion by Fredrikson & Byron, P.A. to Withdraw as Debtor's Counsel;
3. [Proposed] Order; and
4. Certificate of Service

by sending true and correct copies via ECF and U.S. Mail to the parties on the attached service list.

Dated: April 5, 2010

/s/ Cynthia A. Moyer  
Cynthia A. Moyer

4721650

Dennis E. Hecker  
 Service List  
 Bky No. 09-50779

SERVICE VIA ECF		
U.S. Trustee's Office 1015 US Courthouse 300 S Fourth St Minneapolis MN 55415 <a href="mailto:ustregion12.mn.ecf@usdoj.gov">ustregion12.mn.ecf@usdoj.gov</a>	William Skolnick Skolnick & Schiff 2100 Rand Tower 527 Marquette Avenue South Minneapolis, MN 55402 <a href="mailto:wskolnick@skolnick-shiff.com">wskolnick@skolnick-shiff.com</a>	GE Money Bank c/o Recovery Management Systems Corp. Attn: Ramesh Singh 25 S.E. Second Avenue, #1120 Miami, FL 33131-1605 <a href="mailto:claims@recoverycorp.com">claims@recoverycorp.com</a>
Randall L. Seaver U.S. Trustee Portland Corporate Center 12400 Portland Avenue South, #132 Burnsville, MN 55337 <a href="mailto:rseaver@fullerseaverramette.com">rseaver@fullerseaverramette.com</a>	Chrysler Financial Services Americas, LLC, f/k/a DaimlerChrysler Financial Services Americas, LLC c/o Stephen F. Grinnell Gray, Plant, Mooty, Mooty & Bennett, P.A. 500 IDS Center 80 South Eighth Street Minneapolis, MN 55402 <a href="mailto:stephen.grinnell@gpmlaw.com">stephen.grinnell@gpmlaw.com</a>	HSBC Bank Nevada, N.A. c/o Patti H. Bass Bass & Associates, P.C. 3936 E. Ft. Lowell Road, #200 Tucson, AZ 85712-1083 <a href="mailto:ecf@bass-associates.com">ecf@bass-associates.com</a>
Matthew R. Burton Esq. Andrea Hauser, Esq. Leonard, O'Brien, Spencer, Gale & Sayre 100 South Fifth Street, #2500 Minneapolis MN 55402 <a href="mailto:mburton@logsgs.com">mburton@logsgs.com</a> <a href="mailto:ahauser@logsgs.com">ahauser@logsgs.com</a>	Chrysler Financial Services Americas LLC, f/k/a DaimlerChrysler Financial Services Americas, LLC c/o Craig E. Reimer Mayer Brown, LLP 71 South Wacker Drive Chicago, IL 60606 <a href="mailto:creimer@mayerbrown.com">creimer@mayerbrown.com</a>	Associated Bank c/o Joseph W. Lawver Messerli & Kramer P.A. 1400 Fifth Street Towers 100 South Fifth Street Minneapolis MN 55402-1217 <a href="mailto:jlawver@messerlikramer.com">jlawver@messerlikramer.com</a>
Gordon B. Conn Jr. Kalina, Wills, Gisvold & Clark & PLLP 6160 Summit Drive, Suite 560 Minneapolis MN 55430 <a href="mailto:conn@kwgc-law.com">conn@kwgc-law.com</a>	Chrysler Financial Services Americas, LLC, f/k/a DaimlerChrysler Financial Services Americas, LLC c/o Marilyn J. Washburn Riezman Berger, P.C. 7700 Bonhomme, 7 <sup>th</sup> Floor St. Louis, MO 63105 <a href="mailto:MN_bank@riezmanberger.com">MN_bank@riezmanberger.com</a>	VISIONBank c/o Bruce H. Carlson McNair, Larson & Carlson, Ltd. 51 Broadway, #600 Fargo, ND 58102 <a href="mailto:bruce.carlson@mlcfargolaw.com">bruce.carlson@mlcfargolaw.com</a>
U.S. Bank National Association c/o Monica Clark Dorsey & Whitney, LLP 50 South Sixth Street, #1500 Minneapolis, MN 55402-1498 <a href="mailto:clark.monica@dorseylaw.com">clark.monica@dorseylaw.com</a>	Crown Bank c/o Thomas J. Lallier Jeffrey D. Klobucar Foley & Mansfield, P.L.L.P. 250 Marquette Avenue, #1200 Minneapolis MN 55401 <a href="mailto:tlallier@foleymansfield.com">tlallier@foleymansfield.com</a> <a href="mailto:jklobucar@foleymansfield.com">jklobucar@foleymansfield.com</a>	Blackstone Financial, LLC c/o Brad A. Sinclair Serkland Law Firm 10 Roberts Street P.O. Box 6017 Fargo, ND 58108-6017 <a href="mailto:bsinclair@serklandlaw.com">bsinclair@serklandlaw.com</a>
Hyundai Capital America c/o Connie A. Lahn David E. Runck Fafinski Mark & Johnson, PA 400 Flagship Corporate Center 775 Prairie Center Drive Eden Prairie, MN 55344 <a href="mailto:connie.lahn@fmjlaw.com">connie.lahn@fmjlaw.com</a> <a href="mailto:david.runck@fmjlaw.com">david.runck@fmjlaw.com</a>	JPMorgan Chase Bank, N.A. c/o Matthew A. Swanson Leonard, Street and Deinard, PA 2300 Fifth Street Towers 150 South Fifth Street Minneapolis MN 55402 <a href="mailto:matthew.swanson@leonard.com">matthew.swanson@leonard.com</a>	TCF National Bank c/o Robert G. Parish Faegre & Benson, LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3901 <a href="mailto:rparish@faegre.com">rparish@faegre.com</a>
Tamitha Hecker c/o Nauni Jo Manty Manty & Associates, P.A. 510 First Avenue North, #305 Minneapolis, MN 55403 <a href="mailto:ecf@mantylaw.com">ecf@mantylaw.com</a>	Toyota Financial Savings Bank Toyota Motor Credit Corporation c/o Michael L. Meyer Ravich Meyer Kirkman McGrath Nauman & Tansey, P.A. 4545 IDS Center 80 South Eighth Street Minneapolis, MN 55402 <a href="mailto:mlmeyer@ravichmeyer.com">mlmeyer@ravichmeyer.com</a>	Ralph Mitchell Lapp Libra Thomson et al. 120 S. 6 <sup>th</sup> Street, Suite 2500 Minneapolis, MN 55402 <a href="mailto:rmitchell@lapplibra.com">rmitchell@lapplibra.com</a>
United States Rent A Car and Maria Romano c/o Jamie R. Pierce Hinshaw & Culbertson, LLP 333 South Seventh Street, #2000 Minneapolis, MN 55402 <a href="mailto:jpierce@hinshawlaw.com">jpierce@hinshawlaw.com</a>		Andrew P. Moratzka Mackall Crounce and Moore 901 Marquette Avenue 1400 AT&T Tower Minneapolis, MN 55402 <a href="mailto:amp@mcmlaw.com">amp@mcmlaw.com</a>
William F. Mohrman Mohrman & Kaardal P.A. 33 S. 6 <sup>th</sup> Street, Suite 4100 Minneapolis, MN 55402 <a href="mailto:mohrman@mklaw.com">mohrman@mklaw.com</a>		

Dennis E. Hecker  
Service List  
Bky No. 09-50779

SERVICE VIA U.S. Mail
<u><b>Debtor</b></u>
Dennis Hecker Denny Hecker Automotive Group, Inc. 500 Ford Road Minneapolis MN 55426 <a href="mailto:heckerauto@aol.com">heckerauto@aol.com</a>
Toyota Financial Savings Bank c/o Michael B. Lubic Sonnenschein Nath & Rosenthal, LLP 601 S. Figueroa Street, #2500 Los Angeles, CA 90017-5704 <a href="mailto:mlubic@sonnenschein.com">mlubic@sonnenschein.com</a>

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

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**ORDER ON MOTION OF FREDRIKSON & BYRON, P.A.  
TO WITHDRAW AS THE DEBTOR'S COUNSEL**

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This case came on for hearing before the Court on the motion of Fredrikson & Byron, P.A. to Withdraw as the Debtor's Counsel. Appearances are noted on the record. All capitalized terms not otherwise defined in this order have the meaning ascribed to them in the motion.

Based upon the arguments of counsel, all the files, records and proceedings herein, the Court being advised in the premises, and the Court's findings of fact and conclusions of law, if any, have been stated orally and recorded in open court following the close of argument:

**IT IS ORDERED:**

1. The motion is GRANTED. Fredrikson & Byron, P.A. is authorized to withdraw from representation of the debtor in this case and may terminate its representation of the debtor.

Dated:

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Robert J. Kressel  
United States Bankruptcy Judge